United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

74-2572

MAR 28 1975

IN THE UNITED STATES COURT
OF APPEALS FOR THE SECOND
CIRCUIT

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DOCKET NO. 74-2572

UNITED STATES OF AMERICA,
APPELLEE,

VS.

ALPHONSE JOHNSON,
APPELLANT

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
OF CONNECTICUT

APPELLANT'S REPLY BRIEF

ALPHONSE JOHNSON
P.O. BOX 1000
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ARGUMENT

The Appellee attempts to make a distinction in an explicit finding, and affirmative finding, in regards to the youth offenders Act and the young adult offender, respectively. The Appellant respectively submits that no distinction exist and the Supreme Court in Dorszynski VS. United States, _____U.S._____,94 S. Ct. (1974) attest to this fact. First, the Appellee acknowledged that Dorszynski "recognized that persons convicted between the ages of 22 and 26 may be sentenced for treatment under the youth correction act only where the court finds that there are reasonable grounds..." (See Appellee's Brief, page 7). This is Appellant's Argument. The court did not make an explicit finding.The Appellant's reasoning is, and the most prudent minds would have to agree with him, if Dorszynski requires an explicit finding and if United States vs. Kaylor, 491 F. 2d (2Cir. 1973) requires an explicit finding (See Appellee's Brief, page6) and the Supreme Court in Dorszynski (Ft. note 6) states that: "...convicted persons between the ages of 22 and 26, termed "young adult" offenders, may be sentenced for treatment under the Act if "the court finds that there is reasonable grounds to believe that the defendant will benefit from" treatment under the Act. 18 U.S.C. Section 4209..." Then, the finding must be explicit, and the lower court did not explicitly find that the Appellant would to the young adult offenders Act, which was error.

It is true that weel-established doctrine bars review of the exercise of sentencing discretion, limited review is available, however, when sentencing discretion is not exercised at all. Yates vs. United States, 356 U.S. 363, 366-367 (1958); United States vs. Daniels, 446 F. 2d 967, 972 (CA 6 1971); United States vs. Williams, 407 F. 2d 940, 945 (CA 4 1967). The requirement of the "no benefit" finding was designed to insure that the sentencing judge exercised his discretion in choosing not to commit a youth offender to

treatment under the Act. Such a finding would make unmistakably clear that the sentencing judge was not only aware of the existence of the new act, but also knew that the youth offender before him was eligible because of his age for the treatment it provided to accomplish its importance purpose.

" An explicit finding that petitioner would not have benefited from treatment under the act would have removed all doubt concerning whether the enlarged discretion congress provided to sentencing courts was indeed exercised" See: Dorszynski.

Accordingly, the judgment of the district court should be reversed, and the case remanded consistent with Dorszynski.

RESPECTFULLY SUBMITTED

/s/ Alphonse Johnson

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SUBSCRIBED TO AND SWORN BEFORE ME THIS 21st DAY OF MARCH 1975

/s/ [illegible]

NOTARY

Authorized by the Act of July 7, 1955
to Administer Oaths (18 U.S.C. 4004)

CERTIFICATE OF SERVICE

This is to certify that one (1) copy of the foregoing Reply Brief for the Appellant has been forwarded this _____ day of March, 1975, to Peter C. Dorsen, United States Attorney, District of Connecticut, Bridgeport, Connecticut 06603

RESPECTFULLY SUBMITTED

/s/ alphonse Johnson

ALPHONSE JOHNSON

SUBSCRIBED TO AND SWORN BEFORE ME THIS 21st DAY OF MARCH 1975

/s/ [illegible]

NOTARY

Authorized by the Act of July 7, 1955
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